

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Global Plus 2C Contracts (MC2012-5)
Negotiated Services Agreements

Docket No. CP2013-42

ORDER APPROVING ADDITIONAL
GLOBAL PLUS 2C NEGOTIATED SERVICE AGREEMENT

(Issued January 28, 2013)

I. INTRODUCTION

The Postal Service seeks to include a new contract (Agreement) within the Global Plus 2C product on the competitive product list.¹ For the reasons discussed below, the Commission approves the request.

¹ Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 2C Contract Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, January 11, 2013 (Notice). The Notice was filed pursuant to 39 C.F.R. 3015.5. *Id.* at 1.

II. BACKGROUND

Product history. The Postal Service enters into Global Plus 2C contracts with Postal Qualified Wholesalers (PQWs) and other large businesses that offer mailing services to end users for shipping articles via Global Direct and/or International Business Reply Service. *Id.* at 5.

The Commission added Global Plus 2C to the competitive product list by operation of Order No. 1135, based on authorization in Governors' Decision No. 08-10 and the pricing formula in Governors' Decision No. 11-6.² The Commission concurrently included the agreements filed in companion Docket Nos. CP2012-10 and CP2012-11 within Global Plus 2C, and designated them as baseline agreements for assessing the functional equivalency of future agreements proposed for inclusion within the Global Plus 2C product.

The Agreement; effective date and term. The Agreement is the customer's first Global Plus 2 contract. Notice at 3. The Agreement is scheduled to take effect January 14, 2013. Notice, Attachment 1 at 9. As drafted, the Agreement is scheduled to expire the day prior to the date of certain domestic price changes by Canada Post Corporation within the month of January 2014 or, in the absence of such price changes, on January 31, 2014. *Id.* Either party may terminate the Agreement prior to the scheduled expiration date by providing 30 days' written notice. *Id.* at 10.

Commission action. In Order No. 1623, the Commission provided notice of the Postal Service's filing, appointed a Public Representative, and provided interested persons with an opportunity to comment.³

² Docket Nos. MC2012-5, CP2012-10, and CP2012-11, Order Adding Global Plus 2C to the Competitive Product List and Approving Functionally Equivalent Global Plus 2C Agreements, January 13, 2012 (Order No. 1135).

³ Notice and Order Concerning an Additional Global Plus 2C Contract, January 15, 2013 (Order No. 1623).

III. THE POSTAL SERVICE'S POSITION

The Postal Service asserts that its filing demonstrates that the Agreement complies with the requirements of 39 U.S.C. § 3633, is functionally equivalent to the baseline agreements, and should be added to the Global Plus 2C product. Notice at 8. It asserts that the Agreement fits within the Mail Classification Schedule language for Global Plus 2C agreements as outlined by Governors' Decision No. 08-10. *Id.* at 3.

The Postal Service asserts that the Agreement and the baseline agreements possess similar cost and market characteristics and similar functional terms, but states that prices may differ. *Id.* at 4-5. In addition to the name and address of the customer and the signatory, the Postal Service identifies certain differences between the Agreement and the baseline agreements. These differences are the non-inclusion of Global Bulk Economy service; revisions concerning Qualifying Mail; the minimum revenue commitment; the addition of International Business Reply Service; other administrative and transactional terms; and related conforming changes, including renumbering.⁴

The Postal Service asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the contract, and claims that nothing detracts from the conclusion that the Agreement "is functionally equivalent in all pertinent aspects" to the baseline agreements. *Id.* (footnote omitted).

IV. COMMENTS

Comments were filed by the Public Representative.⁵ No other comments were received.

⁴ The Postal Service identifies the differences between the Agreement and the Docket No. CP2012-11 agreement (including conforming changes and renumbering) as affecting the following articles, in whole or part: Articles 1 through 4; 6 through 9; 12 through 15; 18 and 19; 26, 28, 30 through 32; and Annex 1. Notice at 5-7. The Postal Service further identifies Articles 35 (intellectual property, co-branding, and licensing) and 36 (warranties and representation) as additional articles. *Id.* at 7.

⁵ Public Representative Comments on Postal Service Notice of Filing Functionally Equivalent Global Plus 2C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, January 24, 2013 (PR Comments).

The Public Representative's review of the Postal Service's filing leads her to conclude, with some reservations, that the Agreement complies with section 3633(a) and is functionally equivalent to the baseline agreements.

Functional equivalence. The Public Representative observes that the Postal Service states that the Agreement is similar to the contracts filed in Docket Nos. CP2012-10 and CP2012-11 in terms of cost and market characteristics, but also identifies certain differences. PR Comments at 3. The Public Representative concludes that these differences do not affect "any cost or market characteristics that would differentiate the contracts on any substantive level." *Id.* at 4.

Consistency with 39 U.S.C. § 3633. The Public Representative states that, based on a review of data from the Fiscal Year (FY) 2011 International Cost and Revenue Analysis (ICRA), the Agreement satisfies the requirements of 39 U.S.C. § 3633.⁶ *Id.* at 4. However, the Public Representative expresses "strong concern" that the Postal Service did not use cost and volume data from the FY 2012 ICRA, which were filed with the Commission in December 2012.⁷ PR Comments 4-5. She states that she cannot determine whether the Agreement meets the requirements of 39 U.S.C. § 3633 without updated financial workpapers that include data from fiscal year 2012. *Id.* at 5. She urges the Commission to use data from fiscal year 2012 to make cost coverage estimates for the Agreement. *Id.*

V. COMMISSION ANALYSIS

Scope and nature of review. The Commission's responsibilities in this case are to ensure that the Agreement (1) is functionally equivalent to the baseline agreements (Docket Nos. CP2012-10 and CP2012-11); and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. 3015.5 and 3015.7).

⁶ The Public Representative also observes that the Agreement was filed in a manner consistent with 39 U.S.C. §§ 3632 and 3642. *Id.* at 4 and 5.

⁷ The data for FY 2012 were filed as part of Docket No. ACR2012, United States Postal Service FY 2012 Annual Compliance Report, December 28, 2012.

Functional equivalence. The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreements; meets the pricing formula and classification criteria established in the controlling Governors' Decisions; and comports with 39 U.S.C. § 3633 and Commission rules. It also has considered the Public Representative's views. The Commission agrees that the Agreement and the baseline agreements are substantially similar, and that any differences do not undermine a finding of functional equivalency. The Commission therefore concludes that the Agreement may be included in the Global Plus 2C product on the competitive product list.

Cost considerations. The Commission has reviewed the Notice, supporting financial analyses provided under seal, and the Public Representative's comments. In addition, the Commission has evaluated the Agreement using the more recent FY 2012 ICRA data, filed by the Postal Service as part of its 2012 Annual Compliance Report.⁸ Based on the FY 2012 ICRA data, the Commission concludes that the Agreement should cover its attributable costs, should not result in competitive products being subsidized by market dominant products, and should have a positive effect on competitive products' contribution to institutional costs, consistent with 39 U.S.C. § 3633.

The Commission in previous orders has articulated its position that reliance on the most recent available ICRA cost data and information is preferable to use of less current data and information. See, e.g., Order No. 1151; see also PR Comments. The Commission expects that future filings will use the most current ICRA data and information available or provide an explanation of why it is not possible to do so.

Follow-up submissions. The Postal Service shall promptly notify the Commission of the effective date of the Agreement. The Postal Service shall promptly notify the Commission if the Agreement terminates early and provide the date of termination. In

⁸ Docket No. ACR2012, FY 2012 ICRA, Library Reference USPS-FY12-NP2, December 28, 2012.

addition, within 30 days of the expiration or termination of the Agreement, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group associated with the contract, including any penalties paid.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2013-42 is included within the Global Plus 2C product.
2. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.
3. The Postal Service shall promptly notify the Commission if the Agreement terminates earlier than scheduled and provide the date of expiration.
4. Within 30 days of the expiration or termination of the Agreement (Docket No. CP2013-42), the Postal Service shall file costs, volumes, and revenues disaggregated by weight and country group, including any penalties paid.

By the Commission.

Shoshana M. Grove
Secretary